

**HAMPTON PLANNING BOARD – MINUTES**  
December 7, 2005 – 7:00 PM

**PRESENT:** Tracy Emerick, Chairman  
Tom Higgins, Vice Chairman  
Fran McMahon, Clerk  
Cliff Pratt, Selectman  
Keith Lessard  
Bob Viviano  
Tom Gillick  
James Steffen, Town Planner

**ABSENT:**

Chairman Emerick began the meeting at 6:58 PM by introducing the Board members. Mr. Higgins led the Pledge of Allegiance to the flag.

**I. WITHDRAWALS**

Diane Gordon 5-43 LL  
Minor Lot Line Adjustment at  
18 Huckleberry Lane  
Map 98 Lot 41  
Owner of Record: Diane Gordon

Chairman Emerick announced that this application has been withdrawn. A new application has been submitted and will be heard on December 21, 2005.

**II. ATTENDING TO BE HEARD**

1. Jose Salema 5-41 CU  
Change of Use at  
395 Ocean Boulevard  
Map 265 Lot 32  
Owner of Record: Claire M MacDonald, Trustee of Claire M  
MacDonald Revocable Living Trust

Michael Donahue, Attorney, and Jose Salema, Applicant, presented this application. The applicant wishes to establish a Dunkin Donuts restaurant at this location. The property is currently used as a convenience store. There will be changes to the façade of the building.

**BOARD**

Mr. Higgins asked if the applicant proposed to own the property or rent it. He will rent it. He asked if the business was proposed to be run year-round. The applicant plans to run it seasonally. He also asked if the canopy of the building encroached on Town land. This is unclear. Mr. Donahue stated that the applicant will go to the Board of Selectmen if it is determined to be needed.

Proposed renovations will be discussed with the Building Inspector, since a building permit will be required.

Mr. McMahon asked if the applicant intended to include Baskin-Robbins or some other business with the Dunkin Donuts. The space is small and the applicant does not intend to have other brands in the space.

The applicant proposes to have a take-out window at the front of the building. Mr. Lessard indicated that this does not appear to be viable. The plans do not show a property line, and it is unclear whether lines will form on the public sidewalk or on the property's land. The appropriateness of queuing customers on the Town right-of-way (sidewalk) was discussed. There is a question as to whether the applicant will have to appear before the Board of Selectmen. The question involved is the intensity of use on the sidewalk.

Mr. Donahue asked if it would be appropriate for the Planning Board to approve the change of use conditionally, subject to review by the Board of Selectmen.

Mr. McMahon asked how loading and unloading would take place. This will be through the front entrance.

**MOVED** by Mr. Gillick to conditionally approve the change of use at 395 Ocean Boulevard, Map 265 Lot 32, subject to clarification of the property lines and whether review by the Board of Selectmen is needed.

**SECOND** by Mr. Lessard

**VOTE:** 7-0-0

**MOTION PASSED**

2. Nancy Ducharme  
Change of Use at  
32 Depot Square  
Map 143 Lot 21  
Owner of Record: Avalon Investments, LLC

5-48 CU

Peter Saari, Attorney, and Nancy Ducharme, Applicant, presented this application. Mr. Saari stated the intended use would be classified as either a therapeutic center or a wellness center. The space is approximately 700 square feet. There will be no physical changes to the building outside and only minor alterations inside.

The parking and ownership of the road were discussed.

**MOVED** by Mr. Gillick to grant the change of use at 32 Depot Square, Map 143 Lot 21.

**SECOND** by Mr. Lessard

**VOTE:** 7-0-0

**MOTION PASSED**

### **III. NEW PUBLIC HEARINGS**

1. Judith A LaBranche 5-40 SP  
Special Permit to Impact Wetlands Conservation District at  
4 Wall Street  
Map 282 Lot 132  
Owner of Record: Judith A LaBranche

Frank Pare, Building Contractor, presented this application on behalf of the applicant. The applicant proposes to construct an addition to her home.

**BOARD**

No questions

**PUBLIC**

No comments

**BOARD**

**MOVED** by Mr. Gillick to grant the requested special permit at 4 Wall Street, Map 282 Lot 132, subject to the conditions as specified in the Conservation Commission's memo of October 30, 2005.

**SECOND** by Mr. Lessard

**VOTE:** 7-0-0

**MOTION PASSED**

2. Bley Realty 5-42 CC  
Condominium Conversion at  
6 Summerwood Drive  
Map 119 Lot 1-3  
Waiver of Subdivision Regulation Section V.E. (Detailed Plan)  
Owner of Record: Richard A & Ruth E Bley
3. Bley Realty 5-47 CC  
Condominium Conversion at  
12 Summerwood Drive  
Map 137 Lot 1-6  
Waiver of Subdivision Regulation Section V.E. (Detailed Plan)  
Owner of Record: Richard A & Ruth E Bley

Peter Saari, Attorney, and Richard Bley, Owner, presented this application.

Chairman Emerick asked if the Board of Selectmen has approved the street name. It was determined that this has been established as a street.

**MOVED** by Mr. Gillick to grant the waiver of subdivision regulations for 6 Summerwood Drive, Map 119 Lot 1-3.

**SECOND** by Mr. McMahon

**VOTE:** 7-0-0

**MOTION PASSED**

**MOVED** by Mr. Gillick to grant the condominium conversion at 6 Summerwood Drive, Map 119 Lot 1-3.

**SECOND** by Mr. McMahon

**VOTE:** 7-0-0

**MOTION PASSED**

**MOVED** by Mr. Gillick to grant the waiver of subdivision regulations for 12 Summerwood Drive, Map 137 Lot 1-6.

**SECOND** by Mr. McMahon

**VOTE:** 7-0-0

**MOTION PASSED**

**MOVED** by Mr. Gillick to grant the condominium conversion at 12 Summerwood Drive, Map 137 Lot 1-6.

**SECOND** by Mr. McMahon

**VOTE:** 7-0-0

**MOTION PASSED**

4. Corinne F Martin Revocable Living Trust and 5-45 SP  
Mark & Virginia Lee McCaddin  
Special Permit to Impact Wetlands Conservation District at  
27 and 31 Munsey Drive  
Map 76 Lots 10 and 11  
Owners of Record: Corrine F Martin Revocable Living Trust and Mark &  
Virginia Lee McCaddin

Mr. Pratt recused himself for this application.

Amanda Barker, NH Soil Consultants, and Jim Martin, Applicant, presented this application. Ms. Barker indicated that the applicant is proposing to impact 9312 square feet of the Wetland Conservation District for the purpose of creating a pond on the property, with an associated access driveway. Ms. Barker indicated that storm runoff is currently not treated before flowing into Ice Pond. The created pond will have an aquatic shelf of a foot. It will deepen to 10 feet to support native fish species, which will control the insect population. There will be no siltation into the wetlands. The access way will remain after completion to allow for future maintenance.

**BOARD**

Mr. Viviano asked the purpose of the pond. The applicant responded that it is an amenity. The area is currently a swamp and breeds mosquitoes. A pond will control the mosquito population.

Mr. Higgins asked about the easement to the Town for the pond. The culvert will drain into the new pond. There will be no work on the existing culvert.

There was additional discussion of the flow of water and treatment of the water. Mr. Lessard stated his concern was that a future owner might come back to the Town, asking the Town not to treat the road because of the chemicals used.

Ms. Barker indicated the plan assumes there will not be a high water quality in the area. The species of fish planned for the pond are ones that can tolerate poor water quality.

**MOVED** by Mr. Gillick to approve the Special Permit to Impact the Wetlands Conservation District at 27 and 31 Munsey Drive, Map 76 Lots 10 and 11, in accordance with the conditions stated in the Conservation Commission's memo of November 29, 2005.

**SECOND** by Mr. Lessard

**VOTE:** 6-0-0

**MOTION PASSED**

5. Peter & Dennis Nugent  
Condominium Conversion at  
42-44 Brown Avenue  
Map 282 Lot 71  
Waiver from Subdivision Regulations Section V.E (Detailed Plan)  
Owner of Record: Peter & Dennis Nugent

5-44 CC

Peter Saari, Attorney and Dennis Nugent and Ernie Cote presented the application. Each unit will have its own limited common area and each unit will have 2 parking spaces.

**BOARD**

There was a brief discussion of the parking arrangement.

**PUBLIC**

No comments

**BOARD**

**MOVED** by Mr. Lessard to grant the waiver from Subdivision Regulations Section V.E (Detailed Plan) at 42-44 Brown Avenue, Map 282 Lot 71

**SECOND** by Mr. Viviano

**VOTE:** 7-0-0

**MOTION PASSED**

**MOVED** by Mr. Lessard to grant the condominium conversion at 42-44 Brown Avenue, Map 282 Lot 71.

**SECOND** by Mr. Viviano

**VOTE:** 7-0-0

**MOTION PASSED**

6. Richmond Suites, LLC 5-46CC  
Condominium Conversion at  
89 Ashworth Avenue  
Map 290 Lot 1-A  
Waivers from Subdivision Regulations Section V.E (Detailed Plan)  
Owner of Record: Richmond Suites, LLC

Stephen Ells, Attorney, Donald Duval, Surveyor, and William Dube, Applicant, presented this application.

Mr. Ells stated there are year-round Certificates of Occupancy for all the units. There is one legal, non-conforming parking space for each unit. Previously, a problem with this proposal was the location and size of the curb cut. Since then, the Town has provided a new sidewalk with a full curb cut. No structural changes are proposed. The use is intended to remain the same.

#### BOARD

Mr. Steffen pointed out that Building Department records indicate that two of the units have Seasonal Certificates of Occupancy only. The other units do have year-round Certificates of Occupancy.

Mr. Gillick asked if the Planner's December 5<sup>th</sup> memo was still his advice to the Board. Mr. Steffen said, additionally, there is an opinion from Town Counsel to be considered. The attorney has changed his opinion, since the spring review of this proposal, with respect to the need for a variance because of the size of the parking spaces. He does believe that there may be encroachment of parking spaces onto the Town right-of-way.

There was discussion of the parking spaces and whether these should be delineated and/or deeded.

Mr. Duval states the spaces are 8' x 16 ½" on the owner's property. There is another 1-2 feet to the sidewalk that is Town right-of-way.

It was the consensus of the Board that the parking space striping should not be on Town property.

PUBLIC

No comments

BOARD

Mr. McMahon asked what the plan is for snow removal. Mr. Ells said they would continue to do what they have been doing. Snow will have to be removed.

The Board continued to discuss the treatment of the non-conforming parking spaces and the Board's responsibility with respect to approving plans with these parking spaces.

Mr. Ells explained how the non-conforming spaces are being handled in another location. The end result is that the parking will not be in the deed. Parking will be allocated in the condominium documents.

Mr. McMahon asked about variances for the parking spaces. They are pre-existing non-conforming spaces.

The Board further discussed handling of the parking.

Mr. Ells indicated that there are plans for interior renovation, which will include work necessary to get year-round Certificates of Occupancy for the 2 units that are currently Seasonal only.

The plans will need to be changed to depict the portion of the parking areas that are on the property only.

**MOVED** by Mr. Viviano to grant the waiver from Subdivision Regulations Section V.E (Detailed Plan) at 89 Ashworth Avenue, Map 290 Lot 1-A

**SECOND** by Mr. Lessard

**VOTE: 7-0-0**

**MOTION PASSED**

**MOVED** by Mr. Lessard to grant the condominium conversion at 89 Ashworth Avenue, Map 290 Lot 1-A, subject to the following conditions:

- There will be year-round Certificates of Occupancy in effect for each unit prior to sale.
- The site plan shall be revised to show more detail on the new curb cut and sidewalk.
- The parking lot striping will be on the owner's property only and not on town property.
- Condominium documents shall be submitted to be reviewed by the Town Attorney.

- Note #10 on the plan shall be revised to read:  
*This plan shows a number of legal, pre-existing nonconformities, including but not limited to, parking, to the Town of Hampton Zoning Ordinance.*
- There will be a note on the plan stating as follows:  
*The parking spaces shown on this plan do not conform to current dimensional requirements of the Town of Hampton Zoning Ordinance. No approval by the Planning Board should be construed as giving permission to park any part of a vehicle on the Town's Right-of-way.*
- A recordable Mylar and appropriate recording fees shall be submitted.

**SECOND** by Mr. Viviano

**VOTE:** 6-1-0-

**MOTION PASSED**

7. UNITIL Energy Systems, Inc. 5-49 SP  
Special Permit to Impact Wetlands Conservation District at  
Tidal Salt Marsh Flats adjacent to Landing Road  
Maps 202, 216, 217, 229, 230, 240, 241, and 251  
Lots 2-3, 2, 1-4, 2-4/5/6+3, 16-2 & 17, 1-2, 13, 1  
Owner of Record: Unitil Energy Systems, Inc. – 100' wide power  
transmission line "easement/right-of-way"

John Davis, J A Davis & Associates, and Skip Sogopoulos, Unitil, presented this application. Mr. Davis described the path of the easement. He said they were going to replace all the poles and update the power transmission lines. It is necessary to update the lines because of the increased service requirements. They have met with the Conservation Commission, which has requested that the work be done in the wintertime while the ground is frozen. Skip said they are eliminating 3 poles and moving some out of wetlands.

#### BOARD

Mr. Gillick asked if the poles would be higher. Yes, they will. He asked if the poles could be used for cell phone transmission. The applicant said these poles will be 40' high, not the 100' used for this other application.

He explained that there are 2 lines on this path – 1 as current use and the other as backup. They are reaching the point where 1 line can't handle load. It needs to be upgraded to a larger conductor. The capacity will be increased to handle the foreseeable future. There will be no increase in voltage.

#### PUBLIC

No comment



**BOARD**

**MOVED** by Mr. Gillick to grant the Special Permit to impact the Wetlands Conservation District at Tidal Salt Marsh Flats adjacent to Landing Road, Maps 202, 216, 217, 229, 230, 240, 241, and 251 Lots 2-3, 2, 1-4, 2-4/5/6+3, 16-2 & 17, 1-2, 13, 1

**SECOND** by Mr. Lessard

**VOTE:** 7-0-0

**MOTION PASSED**

8. Dave Snow 5-50 SUB  
2-Lot Subdivision at  
34 Mill Pond Lane  
Map 150 Lot 2  
Owner of Record: Helen and George Snow

Peter Saari, Attorney, and Joe Coronati, Engineer, presented this application. David and George Snow, the applicant and owner, were present. Mr. Coronati indicated the applicant's intent was to run the lot line down the zoning district line, since it is a split zone. The Zoning Board of Adjustment granted a variance for 2 lots. Drainage wouldn't change, but the house location might change from what is represented on the plan. There will be a view easement so that the new house will have a wooded buffer. Sewer and water services will be needed to the new house.

**BOARD**

Mr. Higgins asked about the view easement. The owner wishes to continue to control the corner of the sold lot so that it will remain wooded.

**PUBLIC**

No comments

**BOARD**

Mr. Lessard asked if the new home could become a duplex in the future, since it was not completely in an RB zone. The variance granted was to conduct a single family home.

**MOVED** by Mr. Gillick to accept jurisdiction of the application to a date certain of January 18<sup>th</sup>, to accept the Planner's recommendation and send the plan out for departmental review, and to set up a \$1,000 escrow.

**SECOND:** by Mr. Pratt

**VOTE:** 7-0-0

**MOTION PASSED**

**IV. CONTINUED PUBLIC HEARINGS**

- 1) Pond Side LLC c/o Malcolm Smith SUB 5-01  
3-lot Subdivision Review at  
195 & 201 Woodland Road  
Map 95 Lot 2 and Map 96 Lot 3  
Owner of Record: Pond Side LLC c/o Malcolm Smith

Jeffrey Clifford, Altus Engineering, and Amanda Barker, NH Soil Consultants, presented this application. It was previously a 4-lot subdivision and has been revised to a 3-lot subdivision because of denial of the Special Permit previously. Mr. Clifford commented that these are 2 buildable lots today. He described the new Lot 3. Wetlands will not have to be impacted, so no special permit will be needed.

Mr. Clifford said he got a letter from the Town's attorney speaking to the "area requirement" issue, and the attorney's opinion is that the 11, 250 square foot requirement, outside of the Wetland Conservation District (in an RA zone) governs. The "square" requirement for 5,000 square feet of contiguous buildable land is also met.

Mr. Clifford said they have withdrawn their Dredge & Fill application with the State, since it is no longer needed.

Jones & Beach Engineering's letter talked about the location of the wetland line on Lot 3. There will be minimal grading. They agree with a pesticide restriction on all the lots. Ms Barker said that Ice Pond is not subject to the Shoreland Protection Act. The proposal to adhere to pesticide restriction is voluntary.

Mr. Gillick asked how pesticide restriction would be enforced. It would be on a complaint basis.

Storm water – Drainage analysis demonstrated there was no impact. With elimination of lot 4, there is even less impermeable surface.

3-lots meet all requirements and they are buildable.

Mr. Clifford indicated that the Town Recreation Department is interested in portions of this property to use the pond for a public skating area. This was discussed. Mr. Steffen indicated this was just an idea that had been discussed informally.

## BOARD

Mr. Higgins asked why the strip of land with access to the back went with Lot 3 and why the lot in back went with Lot 3 and not with Lot 1. The

response was that the owner wanted access from the road on Lot 3 and wanted the view from the back.”

## PUBLIC

Bob Casassa, Attorney, representing Mr. & Mrs. Rogers from 183 Woodland Road, asked if there could be an approval condition on Lot #3 that it could not be further subdivided in the future. Other than that, his clients concerns have been addressed.

Jay Diener, 6 Woodland Road, is concerned about the Ice Pond value to the Town as a wildlife habitat. They are looking for ways to protect the land. The Seacoast Land Trust, the Conservation Commission and the Recreation Department are all interested in finding ways to protect this property. He stated it is not in the best interest of the Town of Hampton to allow development beyond the 2-lot development currently allowed.

## BOARD

Mr. Gillick asked if the application is in conformance with our guidelines. Mr. Steffen said it is in conformance with the Zoning Ordinance. He just didn't see a hydrant on the land.

Mr. Steffen said the Board might want to make sure there are enough protections, since it is such environmentally sensitive land.

**MOVED** by Mr. Gillick to accept jurisdiction to a date certain of January 18, 2006 for the following actions:

- The plans shall be revised to indicate that footnote 22, under Section 4.2 of the Zoning Ordinance can be complied with. (this footnote states: *A lot must be able to contain within the property lines and touching the front lot line, a square whose sides are equal in length to 75% of the frontage requirement of the district in which the lot is located.*)
- The closest fire hydrant to the proposed subdivision is to be located and identified on the plans.
- An escrow account in the amount of \$1,500 will be established for engineering peer review.
- The plans will be sent out for departmental review, including the Conservation Commission, and for engineering review.

**SECOND** by Mr. Lessard

**VOTE:** 7-0-0

**MOTION PASSED**

- 2) Brian C Hayes  
Site Plan Review at  
486 Winnacunnet Road

SITE

Map 222 Lot 82  
Owner of Record: Brian C Hayes  
Jurisdiction Accepted: September 21, 2005

Stephen Ells, Attorney, and Brian Hayes, Applicant, presented this application. The only issue remaining is the reference to Hillsborough County on the plans. The plans have been amended to address concerns raised previously. Surf Street is depicted as 20-feet wide. The plans now show garage parking inside the building.

#### BOARD

Mr. Lessard wants the plans to show that the garages are the 2 designated parking spaces.

The sidewalk issues have been addressed.

We have received approval from the Fire Department on the revised plans.

#### PUBLIC

No comments

#### BOARD

Mr. Steffen said that the handicapped parking question was not yet addressed with certainty. This was discussed. Mr. Steffen will get clarification of the handicap parking requirements for the future.

**MOVED** by Mr. Lessard to approve the site plan at 486 Winnacunnet Road, Map 222 Lot 82, subject to the following conditions:

- The final plans shall be corrected to change the County of plan recording to Rockingham.
- The condominium declaration shall include language requiring that maintenance of the private road, which shall include any underground utility lines, be the responsibility of the condominium association. The condominium documents shall be approved as to form by the Town.
- An escrow account shall be established in the amount of \$2,000 for inspection fees.
- Payment of a sewer permit fee of \$125.00 per unit, for a total of \$625.00, prior to issuance of a building permit.
- Payment of the School Impact Fee of \$1,898. per unit prior to issuance of a building permit. This will be for 4 units (5 new dwelling units less 1 existing unit).
- Compliance with the requirements of RSA 674:41 regarding the issuance of a building permit for development on a private road.
- The Board defines “active and substantial” for the purposes of RSA 674:39 as after completion of all public/private infrastructure improvements.

- The applicant will go before the Board of Selectmen with respect to the private road.
- Prior to final approval, the applicant shall submit final plans, recordable Mylar, and applicable recording fees.

**SECOND** by Mr. Viviano

**VOTE:** 6-1-0

**MOTION PASSED**

## **V. CONSIDERATION OF MINUTES of November 16, 2005**

Page 1 Brian Hayes – should be clearer that plans provided that evening were not provided in sufficient time for review.

Page 3 – Add, “The plan shows a road width of 18 feet.”

**MOVED** by Mr. Lessard to accept the minutes as amended.

**SECOND** by Mr. Pratt

**VOTE:** 7-0-0

**MOTION PASSED**

## **VI. CORRESPONDENCE**

Condiview impact fees were overpaid \$137. Peter Ross has requested a refund. The overpayment was the result of a calculation error on the Town’s part. This refund should be issued.

**MOVED** by Mr. Gillick to adjourn.

**SECOND** by Mr. Viviano

**VOTE:** 7-0-0

**MOTION PASSED**

Meeting adjourned at 9:23 PM.

Respectfully Submitted,  
Barbara Renaud  
Planning Board Secretary



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